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OFFICE OF PETITIONS

In re Application of	:	
Bijan Sayyarodsari, et al.	:	DECISION ON PETITION
Application No. 10/731,596	:	UNDER 37 CFR 1.78(a)(6)
Filed: December 9, 2003	:	
Attorney Docket No. 5650-03600	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed March 17, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional Application No. 60/431,821, filed December 9, 2002.

The petition is **DISMISSED AS MOOT**.

While a reference to the prior-filed application was not included in an Application Data Sheet (ADS) or in the first sentence of the specification following the title, a reference, nevertheless, was made in the oath or declaration filed with the application.

The current procedure where a claim for priority under 37 CFR § 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(6).¹ In the present case, the Office noted the claim for priority of the prior-filed

¹ MPEP 201.11 (III)(D) pages 200-59 and 200-60 (Rev. 2. May 2004) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

application in the oath of declaration filed with the application, as shown by its inclusion on the filing receipt.

Additionally, petitioner should be aware that Section MPEP 201.11 (III)(D) states in pertinent part:

“The Office may not recognize any benefit claim where there is no indication of the relationship between the nonprovisional applications or no indication of the intermediate nonprovisional application that is directly claiming the benefit of the provisional application. Even if the Office has recognized a benefit claim by entering it into the Office's database and including it on applicant's filing receipt, the benefit claim is not a proper benefit claim under 35 U.S.C. 119(e) or 35 U.S.C. 120 and 37 CFR 1.78 unless the reference is included in an ADS or in the first sentence>(s)< of the specification and all other requirements are met.”

Any questions concerning this decision on petition may be directed to Retta Williams at (571) 272-3229. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The matter is being referred to Technology Center AU 2121 for such action as the nature of the case may require.

A handwritten signature in cursive script, appearing to read "Frances Hicks".

Frances Hicks
Petitions Examiner
Office of Petitions